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SHORELAND SETBACKS AND BUFFERS OPTIONS FOR CONSIDERATION OF NR 115 ADVISORY COMMITTEE Prepared January 15, 2002

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1. Proposed Definitions and General Provisions
 2. Buffer and Setback Options
 3. Viewing and Access Corridor Options
 4. Vegetation Management Exceptions
 5. Structural Exemptions from Setback Requirements
 6. Reduced Setback Options
 7. Wetland Buffer Options
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1. PROPOSED DEFINITIONS AND GENERAL PROVISIONS

Primary buffer

A buffer of native shoreland vegetation, parallel to the ordinary high-water mark (OHWM), and extends from the OHWM to "X" feet inland. Within the primary buffer, the following provisions apply:

- One viewing and access corridor to access water,
- Vegetation removal is prohibited, except for control of exotic or invasive species, or because of an imminent safety hazard,
- Any vegetation removal requires replacement with native vegetation, and
- Structures are prohibited, except for structures that are exempted from setback requirements.

Secondary buffer

A vegetated buffer extending from "X" feet inland to minimum setback line. Within the secondary buffer, the following provisions apply:

- Maintenance of a vegetated buffer is required and turf, groundcovers, or native ground layer vegetation would qualify,
- Removal of trees and shrubs is allowed, and
- Structures are prohibited, except for structures that are exempted from setback requirements.

Viewing and Access Corridor (VAC)

A corridor extending through the primary buffer, connecting the secondary buffer to the waterfront. Within the VAC, the following provisions apply:

- Maintenance of a vegetated corridor is required and turf, groundcovers, or native ground layer vegetation would qualify,
- Selective removal of trees and shrubs is allowed to create the corridor, if not naturally occurring, and
- Structures are prohibited, except for structures that are exempted from setback requirements.

2. BUFFER AND SETBACK OPTIONS

Permit System: Administrative

Favor	Option
Yes No	A. 35 foot primary buffer + 40 foot secondary buffer = minimum 75 foot setback
Yes No	B. 50 foot primary buffer + 25 foot secondary buffer = minimum 75 foot setback
Yes No	C. 50 foot primary buffer + 50 foot secondary buffer = minimum 100 foot setback
Yes No	D. Site specific formula for primary buffer + 25 foot secondary buffer = minimum 75 foot setback
Yes No	E. Primary buffer 50% of total setback + secondary buffer 50% of total setback = minimum 75 foot setback
Yes No	F. Primary buffer 50% of total setback + secondary buffer 50% of total setback = minimum 100 foot setback

Analysis of Options

- A. 35 foot primary buffer + 40 foot secondary buffer = minimum 75 foot setback
- + Current standard
 - + Easy to administer
 - Primary buffer is not consistent with buffer widths in NR 151 and NR 216
 - Primary buffer of 35 feet provides little protection of aquatic resources under most conditions (Castelle et al, 1994)
 - “One-size-fits-all” approach not responsive to site specific concerns, such as steep slopes or wetlands
- B. 50 foot primary buffer + 25 foot secondary buffer = minimum 75 foot setback
- + Easy to administer
 - + Primary buffer is consistent with buffer width in NR 151 and NR 216 for lakes and rivers (Note: Outstanding and Exceptional Resource Waters are required to have a 75-foot wide buffer in NR 151 and NR 216)
 - +/- Primary buffer of 50 feet may maintain natural physical and chemical characteristics of aquatic resources, but may be inadequate to maintain biological component (Castelle et al, 1994)
 - “One-size-fits-all” approach not responsive to site specific concerns, such as steep slopes or wetlands
- C. 50 foot primary buffer + 50 foot secondary buffer = minimum 100 foot setback
- + Easy to administer
 - + Primary buffer is consistent with buffer width in NR 151 and NR 216 for lakes and rivers (Note: Outstanding and Exceptional Resource Waters are required to have a 75-foot wide buffer in NR 151 and NR 216)
 - +/- Primary buffer of 50 feet may maintain natural physical and chemical characteristics of aquatic resources, but may be inadequate to maintain biological component (Castelle et al, 1994)
 - Structures located between 75 and 100 feet from OHWM would become nonconforming
 - “One-size-fits-all” approach not responsive to site specific concerns, such as steep slopes or wetlands
- D. Site specific formula for primary buffer + 25 foot secondary buffer = minimum setback of 75 feet
- + Formula approach is more responsive to site specific concerns, such as steep slopes or wetlands
 - Need to develop formula
 - Difficult to administer
 - Is not consistent with buffer widths in NR 151 and NR 216 (unless a minimum primary buffer of 50 feet is required)

- E. Primary buffer 50% of total setback + secondary buffer 50% of total setback = minimum setback of 75 feet
 - + Recognizes counties may choose to go beyond a minimum 75-foot setback
 - Is not consistent with buffer widths NR 151 and NR 216
- F. Primary buffer 50% of total setback + secondary buffer 50% of total setback = minimum setback of 100 feet
 - + Recognizes counties may choose to go beyond a minimum 100-foot setback
 - + Primary buffer is generally consistent with buffer width in NR 151 and NR 216 for lakes and rivers
(Note: Outstanding and Exceptional Resource Waters are required to have a 75-foot wide buffer in NR 151 and NR 216)
 - Structures located between 75 and 100 feet from OHWM would become nonconforming

3. VIEWING AND ACCESS CORRIDOR (VAC) OPTIONS

Permit System: Administrative

If a VAC is not naturally occurring on a property, selective removal of trees and shrubs is permitted to create a single VAC. Options for the maximum width of the VAC are:

Favor		Option
Yes	No	A. 30% of water frontage, not to exceed 50 feet
Yes	No	B. 30 feet wide
Yes	No	C. 30% of water frontage, not to exceed 30 feet
Yes	No	D. 20 feet wide

Analysis of Options

- A. 30% of water frontage, not to exceed 50 feet
 - + Provides a larger VAC for properties with more frontage
 - + VAC is proportional to amount of frontage, but maximum VAC width is 50 feet
 - Clearing, even with standards, will allow long-term disturbance of shoreland contrary to statutory objectives of program
- B. 30 feet wide
 - + Current standard (30 feet in any 100 feet)
 - Clearing, even with standards, will allow long-term disturbance of shoreland contrary to statutory objectives of program
- C. 30% of water frontage, not to exceed 30 feet
 - + VAC is proportional to amount of frontage, but maximum VAC width is 30 feet
 - Clearing, even with standards, will allow long-term disturbance of shoreland contrary to statutory objectives of program
 - More restrictive than current standard
- D. 20 feet wide
 - +/- More restrictive than current standard
 - Clearing, even with standards, will allow long-term disturbance of shoreland contrary to statutory objectives of program

4. VEGETATION MANAGEMENT EXCEPTIONS

Permit System: Administrative or Special Exception (Conditional Use)

Favor	Option
Yes No	A. State agency management plans for state-owned properties
Yes No	B. Local government management plans for locally-owned properties
Yes No	C. Individual property management plans for privately-owned property
Yes No	D. Dam maintenance activities
Yes No	E. Erosion control or other water quality improvement projects
Yes No	F. Utility easement clearing
Yes No	G. Road intersection and driveway line-of-sight clearing

Analysis of Options

- A. State agency management plans for state-owned properties
 - + Helps to assure general public access to outdoor recreation areas
 - + Provides mechanism to permit projects which may not be able to meet general standards because of other management goals, such as trout stream habitat or prairie restoration
- B. Local government management plans for locally-owned properties
 - + Helps to assure general public access to outdoor recreation areas
 - + Removes need for a variance, if specified criteria are satisfied
- C. Individual property management plans for privately-owned property
 - + Provides mechanism to permit projects which may not be able to meet general standards because of other management goals, such as trout stream habitat or prairie restoration
 - + Removes need for a variance, if specified criteria are satisfied
 - May increase workload in zoning offices
- D. Dam maintenance activities
 - + Consistent with need to maintain dams pursuant to NR 333.07(3)(a.) and Chapter 31, Wis. Stats.
- E. Erosion control or other water quality improvement projects
 - + Allows retrofitting of existing facilities and construction of new facilities to implement erosion control or water quality practices
 - + Removes need for a variance, if specified criteria are satisfied
- F. Utility easement clearing
 - + Consistent with removal or pruning of vegetation required for safe operation of public utilities
- G. Roadway intersection and driveway line-of-sight clearing
 - + Consistent with ss. 80.01(3), 81.01 and 81.03, Wis. Stats., for towns or other governmental units to cut roadside vegetation to “provide safety to users of the highway”

Things to Consider:

- Mitigation - Which exceptions to vegetation management provisions should be required to use mitigative practices to help ensure the statutory objectives of the program are met?

Note: The Department believes it may be desirable to create special subchapters in ch. NR 115 for forestry and agricultural uses. If pursued, discussions would occur with interested parties on forestry and agricultural issues after the Advisory Committee wraps up its initial round of meetings (Summer 2003).

5. STRUCTURAL EXEMPTIONS FROM SETBACK REQUIREMENTS

Permit System: Administrative or Special Exception (Conditional Use)

Favor	Option
Yes No	A. Piers
Yes No	B. Boat hoists
Yes No	C. Boathouses
Yes No	D. Boat landings
Yes No	E. Structures to allow reasonable accommodations for residences of handicapped or disabled persons
Yes No	F. Stairways, walkways and mechanical lifts when required for access to navigable water
Yes No	G. Open fences
Yes No	H. Retaining walls when there is a need to control erosion
Yes No	I. Signs and parking lots associated with public access sites
Yes No	J. Marine fuel tanks

Analysis of Options

A. Piers

- + Current standard

B. Boat hoists

- + Current standard

C. Boathouses

- + Current standard
- + Provide standards for construction
- Setback exemption, even with construction standards, will allow increased shoreland development contrary to statutory objectives of program

D. Boat landings

- + Provide standards for construction
- Setback exemption, even with construction standards, will allow increased shoreland development contrary to statutory objectives of program

E. Structures to allow reasonable accommodations for residences of handicapped or disabled persons

- + Consistent with American with Disabilities Act (ADA), the Federal Fair Housing Amendments Act of 1988 (FHAA) and the Wisconsin Fair Housing Act (WFHA) in the administration of local zoning ordinances
- + Clarifies for zoning officials and property owners that a variance is not required, if it is addressed in NR 115

F. Stairways, walkways and mechanical lifts when required for access to navigable water

- + Provide standards for construction
- + Consistent with existing DNR guidance
- Setback exemption, even with construction standards, will allow increased shoreland development contrary to statutory objectives of program

G. Open fences

- + Provide standards for construction
- + Consistent with existing DNR guidance

- Setback exemption, even with construction standards, will allow increased shoreland development contrary to statutory objectives of program

H. Retaining walls when there is a need to control erosion

- + Provide standards for construction
- + Removes need for a variance, if specified criteria are satisfied
- Setback exemption, even with construction standards, will allow increased shoreland development contrary to statutory objectives of program

I. Signs and parking lots associated with publicly-owned access sites

- + Consistent with existing DNR guidance
- + Helps to assure general public access to outdoor recreation areas
- + Removes need for a variance, if specified criteria are satisfied

J. Marine fuel pumps and tanks

- + Consistent with 10-foot minimum setback from navigable waters in Comm 10.415 and Comm 10.42 (Fuel dispensing for marine craft.)

Things to Consider:

- Should any limits be placed on the location of structures that are exempt from setback requirements – in the primary buffer, in the secondary buffer, or in the VAC?
- Should any limits be placed on the construction or size of structures?
- Mitigation - Which exemptions from shoreland setback provisions should be required to use mitigative practices to help ensure the statutory objectives of the program are met?

Note: Open or screened structures exempted under s. 59.692(1v), Wis. Stats., are not listed above and are not affected by changes to NR 115.

6. REDUCED SETBACK OPTIONS

Permit System: Administrative or Special Exception (Conditional Use)

This issue will be discussed in Session 3 with nonconforming structure issues.

7. WETLAND BUFFER OPTIONS

Permit System: Administrative

Wetland Buffer

A vegetated buffer extending from the wetland boundary to “X” feet inland. Within the wetland buffer, the following provisions apply:

- Maintenance of a vegetated buffer is required and turf, groundcovers, or native ground layer vegetation would qualify,
- Removal of trees and shrubs is allowed, and
- Structures are prohibited, except for structures that are exempted from shoreland setback requirements.

Favor		Option
Yes	No	A. None
Yes	No	B. 15-foot buffer
Yes	No	C. For less susceptible wetlands, 10% average width for a 10-foot minimum and 30-foot maximum buffer For highly susceptible wetlands, 50-foot buffer For special natural resources interests (NR103.04), 75-foot buffer

Analysis of Options

A. None

- + Current standard
- Wetlands and the functions they perform would be better protected if there was a buffer

B. 15-foot buffer

- + Easy to administer
- + Provides some protection to wetlands and the functions they perform
- May not be adequate for protection in all instances
- Will remove land from buildable area
- Existing structures within wetland buffer would become nonconforming

C. For less susceptible wetlands, 10% average width for a 10-foot minimum and 30-foot maximum buffer

For highly susceptible wetlands, 50 foot buffer

For special natural resources interests (NR 103.04), 75 foot buffer

- + Easy to administer
- + Provides protection to wetlands and the functions they perform
- + Consistent with NR 151 & NR 216 for wetland buffer width
- Will remove land from buildable area
- Existing structures within wetland buffer would become nonconforming

PUBLIC RECORD

If you would like your comments to be part of the public record for the NR115 rule revision, please provide the following information. Please print legibly.

Date: _____

Name: _____

Address: _____

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Would you like to receive email updates about the status of the NR 115 revision process? ☐ Yes ☐ No